

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

AMBER GASCHO, *et al.*,

on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

GLOBAL FITNESS HOLDINGS, LLC,

Defendant.

CASE NO. 2:11-CV-00436

JUDGE SMITH

MAGISTRATE JUDGE KING

**DECLARATION OF THOMAS MCCORMICK IN SUPPORT OF APPLICATION
FOR ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS**

1. I, Thomas McCormick, Partner in the firm of Vorys, Sater, Seymour and Pease, LLP ("Vorys"), have served as Plaintiff's Counsel, Plaintiff's Interim Co-Lead Counsel and now Class Counsel in the above-captioned action, including the related action, *Tartaglia v. Global Fitness Holdings, LLC*, Case No. 11 CI 1121 (Boone County Circuit Court, Commonwealth of Kentucky), combined for purposes of Settlement (collectively, the "Litigation").

2. I offer this Declaration in support of Plaintiffs' Motion for an Award of Attorneys Fees and Reimbursement of Costs for services rendered to the Class and Subclasses in the Litigation.

3. Vorys' compensation for the services rendered on behalf of the Class is wholly contingent. Any fees and reimbursement of costs and expenses will be limited to such amounts as approved by this Court.

Exhibit 1

4. During settlement discussion with Defendant, Class Counsel first addressed and fully negotiated the benefits to be received by the Class. Only after the cash payments to the Class/Subclass Members were confirmed and agreed upon did the parties negotiate the payment of attorneys fees and costs. As with all other aspects of this Litigation, the negotiation of fees was intense and often heated. Ultimately, because the agreed upon cash payments represented a significant percentage of each Class/Subclass members total alleged damage, we agreed to limit our request for attorney fees and costs to those incurred up to the time of Settlement. (*i.e.*, September 13, 2013).

5. From March, 2011, to the day the Settlement Agreement was reached, September 13, 2013, Vorys billed 5,892 hours in connection with the Litigation. Based upon the standard hourly rates charged by Vorys, the lodestar value for that time is \$1,646,285.70. When combined with Isaac Wiles, Class Counsel's total lodestar value, including costs, as of September 13, 2013, was \$2,351,131.20.

6. From March, 2011, to November 30, 2013, Vorys has billed 5154 attorney hours and 6218 total hours. Based on Vorys standard hourly rates, the lodestar value for all time keepers is \$1,763,074.95. When combined with Isaac Wiles, Class Counsel's current lodestar value, including costs, is \$2,517,318.72. Notably, for the benefit of the Class/Subclasses, Vorys will continue billing time, costs, and expenses in the Litigation until all payments are made under the Settlement Agreement, and all benefits have been received.

7. The hours billed to the Litigation by attorneys, paralegals, and other time-keepers contributed to the lodestar values in Paragraphs 5 and 6 above.

Contemporaneous records were kept of the day the billers worked on the file, the number of hours they worked each particular day, description of work performed, and the hourly rate and lodestar value of the work performed by each individual biller.

8. The following facts and statistics are true (rounded to the nearest whole percentage point) for the lodestar values in Paragraphs 5 and 6 above:

- I have 11 years of experience in handling complex litigation and billed at my standard hourly rates of \$260 per hour in 2011, \$350 in 2012; and \$375 in 2013. My time constitutes over 52% of the time billed by Vorys in the Litigation;
- Kenneth Rubin has 9 years of experience in handling complex litigation and billed at his standard hourly rates of \$230 in 2011, \$270 in 2012; and \$310 in 2013. Mr. Rubin's time constitutes 8% of the time billed by Vorys in the Litigation;
- James Lind has 6 years of experience in handling complex litigation and billed at his standard hourly rates of \$200 in 2011, \$230 in 2012; and \$260 in 2013. Mr. Lind's time constitutes over 3% of the time billed by Vorys in the Litigation;
- Chris Wager has 5 years of experience in handling complex litigation and billed at his standard hourly rates of \$190 in 2011, \$220 in 2012; and \$250 in 2013. Mr. Wager's time constitutes 4% of the time billed by Vorys in the Litigation,
- Miranda Leppla has 3 years of experience in handling complex litigation and billed at her standard hourly rates of \$180 in 2011, \$200 in 2012; and \$230 in 2013. Ms. Leppla's time constitutes 6% of the time billed by Vorys in the Litigation

9. Other attorneys, paralegals, and legal support staff contributed to the lodestar value, including some more senior attorneys who billed at a rate higher than \$375 per hour, however, the attorneys listed in Paragraph 9 billed the most hours on an individual bases and collectively account for approximately 75% of the time billed to the Litigation by Vorys. Attorneys' who billed their time at a rate higher than \$375 per hour

combined for less than 130 hours (2% of the time), with the vast majority of that time (122 hours) billed by Doug Matthews, an attorney with over 25 years experience who billed at \$435 per hour. Mr. Matthews is the head of Vorys electronic discovery practice group and his involvement was critical to the success of this Litigation. He advised and consulted on all aspects of ESI discovery, including the review, testing and application of the predictive coding and key word search technology used in this Litigation and he deposed Defendant's Director of Information Technology.

10. The rates at which Vorys seeks compensation are its usual and customary hourly rates charged for litigation work. The regular increases in attorney rates as shown in Paragraph 8, represent normal adjustments made by Vorys that applied to all attorneys of similar position and experience in our Columbus office. No adjustments have been made to account for the fact that the Litigation was being prosecuted on a contingency basis, the complexity involved, the opposition encountered, the expected delay in payment, or any other factors present in this case that might justify a higher rate of compensation.

11. During the period from April 13, 2011, through November 30, 2013, Vorys incurred expenses totaling \$59,855.92. These expenses were reasonable and necessarily to successfully prosecute the Litigation. These include deposition expenses, mediation costs, outside professional services, mileage at the federal rate of reimbursement, lodging, copying costs, and various research and administrative items covered by Vorys.

12. All of the services performed by Vorys, and expenses and costs incurred, were reasonably necessary in the prosecution of this Litigation. There has been no

unnecessary duplication of services for which Vorys now seeks compensation, either within Vorys or with the Isaac Wiles firm. In fact, we took a great deal of effort to insure that all tasks that could be reasonably performed at lower billing rates were performed by attorneys and staff at those lower billing rates.

13. (a) I was admitted to practice law in Ohio, 2002. Through my 11 years of experience, I have significant litigation experience, both in class actions and other complex civil litigation. In the following class action lawsuits, I litigated consumer protection, misrepresentation, and breach of contract claims, similar to those alleged in this Litigation,: *Rudwasky v. Borrer*, Case No. 2:06-CV-0144, (S.D. Ohio); and *In re: Lawnmower Engine Horsepower Marketing and Sales Practices Litigation*, Case No. 2:08-md-1999 (E.D. Wisconsin). In addition, I have litigated class action claims to resolution in the following matters. *Guttentag v. Abercrombie & Fitch Stores, Inc.*, 9:09-cv-80160-JIC (S.D. Florida); *De La Cruz v. Abercrombie & Fitch Stores, et al.* (Case No. 30-20007-00036240) (Superior Court of Orange County, California); *Walker v. Abercrombie & Fitch Stores, Inc.* (Case No. BC 395336)(Superior Court of Los Angeles County, California); *Hashimoto v. Abercrombie & Fitch Stores, Inc.* (Case No. BC 354479)(Superior Court of Los Angeles County, California). I have actively represented clients in Ohio's state courts, as well as Ohio's federal courts and other jurisdictions' state and federal courts.

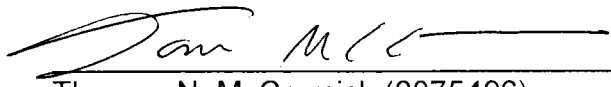
(b) My co-counsel, Kenneth Rubin was admitted to practice law in Ohio in 2004. He was asked to assist in the prosecution of these claims based on his experience litigating class action and complex commercial matters involving consumer protection, fraud, and antitrust claims. His class action experience includes:

Representing a major food processor related to multi-district price fixing claims, *In re: Fresh and Process Potatoes Antitrust Litig.*, 4:10-MC-2186-BLW, (D.C. Idaho); *In re: Lawnmower Engine Horsepower Marketing and Sales Practices Litigation*, Case No. 2:08-md-1999 (E.D. Wisconsin); *Estate of Frieda M. Wilmes, et al, on Behalf of Themselves and All Others Similarly Situated*, 1:08-cv-00715, (S.D. Ohio), Case No. 10-3440, (6th Cir.); and *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 1:05-md-01720-JG-JO, (E.D. New York). In addition, he has been involved in numerous complex matters, as both plaintiff and defendant, that involved breach of contract, fraud, and antitrust allegations.

(c) Vorys has a wealth of experience in both complex civil litigation and class actions. A copy of Vorys' biography is attached hereto as Exhibit A and the biographies of Class Counsel from Vorys is attached hereto as Exhibit B.

I hereby affirm under penalty of perjury of the laws of the United States that the foregoing is true and accurate.

Dated: 12/9/2013


Thomas N. McCormick (0075496)
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Columbus, Ohio 43215-1008
(614) 464-6433 (telephone)
(614) 719-4693 (facsimile)
One of Plaintiff's Class Counsel



Consumer Class Actions

Overview

Vorys was established in 1909 and has grown to be one of the largest Ohio-based law firms with nearly 375 attorneys in seven offices in Columbus, Cincinnati, Cleveland and Akron, Ohio; Washington, D.C.; Houston, Texas; and Pittsburgh, Pennsylvania. Vorys currently ranks as one of the 200 largest law firms in the United States according to *American Lawyer* magazine.

Our clients range from some of the world's largest companies to individuals and small businesses. We represent virtually every industry: insurance, food service, construction, engineering, pharmaceutical, automotive, banking, manufacturing, higher education and many more. These clients include some of the most respected businesses in the nation. In addition, a significant portion of our work is on behalf of federal, state and local governments.

Litigation

Vorys' Trial Group contains more than 100 attorneys and represents clients in all manner of business and commercial disputes. We litigate claims of breach of a contract, lease, or other written instrument; the break-up of a partnership or joint venture; the contentious departure of a company official; class actions; fraud claims; multi-district litigation battles for control of business entities; and all other types of commercial controversies.

Our lawyers are skilled at identifying and arguing threshold legal issues that may avoid protracted litigation, at efficiently and effectively managing discovery (even in cases involving the production of millions of pages of documents or enormous amounts of electronic data), and at understanding and persuasively presenting, to courts and juries, issues that are legally and factually complex.

Class Actions

We regularly litigate class actions in federal and state courts across the country. Because the class action mechanism may allow thousands of individual claims to be pursued jointly, such cases are high-stakes and involve unique standards and procedures that govern certification of classes, notice, settlement and trial. Our lawyers creatively develop and persuasively present arguments, and marshal the lay and expert evidence that support those arguments. In addition, we have significant experience in counseling clients on the appropriate forum for class actions – we know, understand, and use the Class Action Fairness Act and the Judicial Panel on Multidistrict Litigation to coordinate cases, avoid duplication and reduce costs to our clients.

Our trial lawyers regularly represent clients on issues related to consumer protection, violations of federal statutes such as the Truth in Lending Act, the Home Ownership and Equity Protection Act, the Real Estate Settlement Procedures Act, and the Fair Debt Collection Practices Act. We also frequently litigate claims alleging fraud, conspiracy, negligent lending, and violations of various state consumer protection statutes.

Exhibit A

VORYS

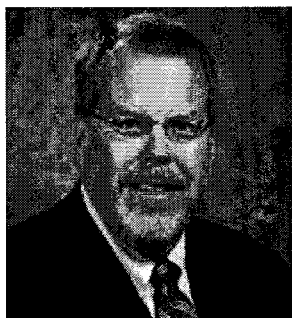
Our Experience

In the last five years, Vorys has handled more than 50 class actions, a number of which have involved fraud, breach of contract, and consumer-based claims. A representative sample includes:

- *In re TJX Retail Security Breach Litigation*, U.S. District Court for the District of Massachusetts, appeal pending in the U.S. Court of Appeals for the First Circuit. (Issuing banks alleged that TJX Corporation and its acquiring bank were liable on various common law and Massachusetts statutory claims as a result of a data breach experienced by TJX Corporation.)
- *Muhammad v. Nat'l City Mortg., Inc.*, U.S. District Court for the Southern District of West Virginia. (Class action challenging loan servicing practices regarding late and partial payments on consumer loans.)
- *Labuel L. Lefever, v. American Ear Hearing Aid & Audiology, LLC, et al.*, Licking County, Ohio Court of Common Pleas. (Consumer class action against hearing aid retailer arising out of alleged violations of Consumer Sales Practices Act and for fraud.)
- *Arlington Video Productions, Inc. v. Fifth Third Bank*, U.S. District Court for the Southern District of Ohio, appeal pending in the U.S. Court of Appeals for the Sixth Circuit. (Nationwide class allegations that Fifth Third charged its checking account customers fees that it failed to disclose.)
- *Larry Mick, et al. v. Level Propane Gases, Inc.*, United States District Court, Southern District of Ohio, Eastern Division. (Class action involving Consumer Sales Practices Act, Fair Credit Reporting Act, and Equal Credit Opportunity Act claims.)
- *Eric Boland v. Best Buy Stores, L.P.*, Court of Common Pleas, Cuyahoga County, Ohio. (Class action involving consumers who purchased computers as new, but whose computers had, in fact, been previously purchased by another consumer.)
- *Ruth Baram and Giora Baram v. National City Mortgage Co.*, Court of Common Pleas, Montgomery County, Ohio. (Class action involving consumer finance claims.)
- *Caldwell v. Ricart Financial Services*, United States District Court, Southern District of Ohio; Sixth Circuit Court of Appeals. (Class action involving consumer finance claims related to borrower credit issues arising from auto loans and financing.)
- *Myrtle Martin v. Services Corp. Int'l, et al.*, Court of Common Pleas, Summit County, Ohio. (Class action claims involving consumer fraud.)

VORYS

Higher standards make better lawyers.



William G. Porter

Partner

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Email wgporter@vorys.com

NEWS

More Than 80 Vorys Attorneys
Included on Ohio Super Lawyers and
Rising Stars List

PRACTICE AREAS

Litigation

INDUSTRIES

Building, Construction,
and Design Services
Colleges and Universities
Financial Institutions
Manufacturing

EDUCATION

Case Western Reserve
University School of Law,
J.D., 1984

Amherst College, B.A.,
1978, *cum laude*

BAR & COURT ADMISSIONS

Ohio

U.S. Court of Appeals for
the Sixth Circuit

U.S. District Court for the
Southern District of Ohio

Mr. Porter is a partner and chair of the firm's litigation practice group. He is a fellow of the American College of Trial Lawyers and listed in Chambers and Partners, Ohio Super Lawyers and the Best Lawyers in America. He practices general civil litigation with an emphasis on representing corporations and their officers and directors in complex civil litigation, including class actions.

Career highlights include:

Representing businesses and individuals in various actions, including class actions, in federal and state courts
Representing corporate officers and directors in alleged breach of fiduciary duty lawsuits
Serving as national trial counsel with respect to manufacturers' liability claims

Mr. Porter is a frequent lecturer on attorney-client privilege issues, internal investigations and on trial advocacy issues, including presentations to the Ohio State Bar Association on "How to Handle the Obstreperous Lawyer in Depositions" and "Real Evidence for Trial Attorneys."

Mr. Porter is a member of the American Bar Association, the Ohio State Bar Association, and the Columbus Bar Association.

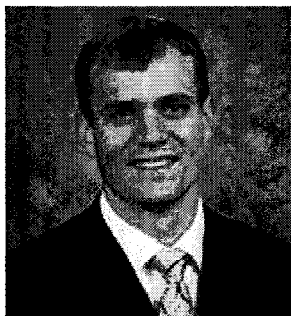
Mr. Porter received his J.D. from Case Western Reserve University School of Law. He received his B.A. *cum laude* from Amherst College.

PROFESSIONAL AND COMMUNITY ACTIVITIES

Columbus Chamber of Commerce, Board of Trustees, 2011- present
Bexley Education Foundation, Chair, Board of Trustees, 2007-2012
Central Ohio Transit Authority, Chair, Board of Trustees, 2002-2009

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Thomas N. McCormick

Partner

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NEWS

Settlement Reached on Urban Active
Fitness Lawsuit

PRACTICE AREAS

Labor and Employment
Litigation

EDUCATION

University of Wisconsin
Law School, J.D., 2002,
with Honors

University of Wisconsin-
Platteville, B.S., 1997,
magna cum laude

BAR & COURT ADMISSIONS

Ohio

United States District
Court for the Southern
District of Ohio

JUDICIAL CLERKSHIPS

The Honorable James L.
Graham, United States
District Court for the
Southern District of Ohio,
2005-2006

Mr. McCormick is a partner in the Vorys Columbus office and a member of the labor and employment and the litigation practice groups. He has a broad range of litigation experiences with a specific focus on employment disputes and class action litigation. He regularly represents and advises clients in cases involving non-compete/trade secret matters, harassment and discrimination claims, and complex litigation. In addition, he has litigated numerous class actions involving wage and hour and consumer sales practices act claims. He has also represented public universities in contract disputes, tort litigation, and counseled student athletes regarding NCAA compliance. He has appeared in state and federal courts throughout the country and before a national and international arbitration panel.

His notable experience includes:

Obtaining a preliminary injunction on behalf of a national manufacturer and distributor pursuant to a non-compete agreement and successfully defending an individual employee against non-compete claims brought by his former employer
Obtaining dismissals or negligible settlements in a number of harassment and discrimination cases filed against national retail clients throughout the country
Representing a design/manufacture in a multi-million dollar contract dispute before the International Centre for Dispute Resolution
Representing the City of Bexley in over twenty bench trials involving various criminal and civil matters

Mr. McCormick is a member of the Federal Bar Association and the Columbus Bar Association.

PROFESSIONAL AND COMMUNITY ACTIVITIES

Camp Mary Orton, Board Executive Committee, 2008-present

Camp Mary Orton, Board of Directors, 2006-present



Kenneth J. Rubin

Associate

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PRACTICE AREAS

Antitrust and Trade
Regulation
Litigation

INDUSTRIES

Insurance
Retail
Transportation and
Logistics

EDUCATION

The Ohio State University
Michael E. Moritz College
of Law, J.D., *summa cum
laude*, Order of the Coif,
2004

Ohio State Law Journal,
Articles Editor, 2003-2004

Northeastern University,
B.S., 2001

BAR & COURT ADMISSIONS

Ohio

U.S. Court of Appeals for
the Sixth Circuit

U.S. District Court for the
Northern District of Indiana

Mr. Rubin is an associate in the Vorys Columbus office and a member of the litigation practice group. His practice is focused on antitrust law, counseling clients regarding price fixing, cartelization, international antitrust issues, and general litigation. He has experience representing both plaintiffs and defendants in antitrust litigation, and has litigated a variety of antitrust issues under the Sherman, Clayton, and Robinson Patman Acts, including cases involving predatory pricing, price fixing, *Walker Process*, tying, group boycotts, monopsony, monopolization, corporate bribery, and issues involving the intersect of intellectual property and antitrust. He regularly represents clients regarding investigations by the Department of Justice, the Federal Trade Commission, and the Ohio Attorney General, and counsels clients on antitrust issues related to mergers and acquisitions, as well as antitrust compliance. Mr. Rubin also has experience representing clients in intellectual property matters, including patent disputes, and has litigated a variety of cases under the Lanham Act and its state law corollaries.

Career highlights include:

Serving as first chair at trial in federal district court regarding commercial litigation and competition issues
Arguing before the United States Court of Appeals for the Sixth Circuit
Representing a hospital regarding Federal Trade Commission injunction action
Representing a major food processor in defending multi-district price-fixing claims
Representing a major technology firm in defending monopolization claims
Representing several trade associations in litigation challenging the constitutionality of an Ohio statute

Mr. Rubin is a member of the American Bar Association (ABA). He serves as a Vice Chair on the ABA's Antitrust Law's Book and Treatises Section. Previously, he served as the Assistant to the Chair of the Section.

Mr. Rubin received his J.D. *summa cum laude* from The Ohio State University Michael E. Moritz College of Law where he was a member of the Order of the Coif. He served as an articles editor for the *Ohio State Law Journal*. Mr. Rubin received his B.S. from Northeastern University.

Prior to joining Vorys, Mr. Rubin clerked for The Honorable R. Guy Cole, Jr. in the United States Court of Appeals for the Sixth Circuit and for The Honorable James

U.S. District Court for the
Northern District of Ohio

U.S. District Court for the
Southern District of Ohio

**JUDICIAL
CLERKSHIPS**

The Honorable R. Guy
Cole, Jr., United States
Court of Appeals for the
Sixth Circuit, 2005-2006

The Honorable James G.
Carr, Chief Judge, United
States District Court for the
Northern District of Ohio,
2004-2005

G. Carr, Chief Judge, in the United States District Court for the Northern District
of Ohio.

PROFESSIONAL AND COMMUNITY ACTIVITIES

Ohio State Bar Association, Antitrust Section Council

Jewish Community Center of Greater Columbus, Board of Trustees, 2011-present

News

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PRACTICE AREAS

Litigation

EDUCATION

Northern Kentucky
University Chase College
of Law, J.D., 2007, *cum
laude*, Order of the Curia

*Northern Kentucky Law
Review*, Associate Editor

Xavier University, M.Ed.,
2002

St. Joseph's College, B.S.,
1997

BAR & COURT ADMISSIONS

Kentucky

Ohio

U.S. District Court for the
Eastern District of
Kentucky

U.S. District Court for the
Southern District of Ohio

JUDICIAL CLERKSHIPS

The Honorable Patrick T.
Dinkelacker, Hamilton

James B. Lind (JB) is an associate in the Vorys Cincinnati office and a member of the litigation practice group. His practice focuses on business, commercial, construction, insurance and product liability/toxic tort litigation.

His notable experience includes:

First Chair Jury Trial experience in a contract dispute that resulted in a verdict for the client well-below settlement value
Member of trial team that successfully negotiated a favorable outcome for a client whose product was accused of causing the death of four individuals
Obtained summary judgment on behalf of a financial institution in excess of \$25 million that involved over 30 lien claimants and lender liability claims
Successfully obtained injunctive relief for client only one hour before a scheduled board meeting would have terminated the client's veto rights
Member of numerous trial teams that have successfully negotiated favorable outcomes and obtained summary judgment for clients involved in asbestos and flavoring cases throughout Ohio and Kentucky
Has appeared in actions pending before the Ohio First and Twelfth District Court of Appeals and the Kentucky Court of Appeals

Mr. Lind is a member of the Cincinnati, Ohio State and Kentucky State Bar Associations.

Mr. Lind received his J.D. *cum laude* from Northern Kentucky University Chase College of Law and served as associate editor for the *Northern Kentucky Law Review*. He received his M.Ed. from Xavier University and his B.S. from St. Joseph's College.

Mr. Lind clerked for the Honorable Patrick T. Dinkelacker and the Honorable Alex M. Triantafilou of the Hamilton County Court of Common Pleas.

Prior to joining Vorys, Mr. Lind was a teacher and athletics coach at Archbishop Moeller High School in Cincinnati.

PROFESSIONAL AND COMMUNITY ACTIVITIES

Northern Kentucky Chamber of Commerce, Member, 2008-present

Salmon P. Chase Inn of Court, Executive Board Member, 2010-present

County Court of Common
Pleas, 2005-2006

National Football Foundation, Greater Cincinnati Chapter, Board of Trustees

The Honorable Alex M.
Triantafilou, Hamilton
County Court of Common
Pleas, 2007

Honors & Awards

News

Insights